

SENATE, No. 783

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

“Unfair Wage Recovery Act”; provides that unlawful employment practice occurs each time individual is affected.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning discrimination in compensation or the terms,
2 conditions, or privileges of employment and amending and
3 supplementing P.L.1945, c.169.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. (New section) This act shall be known and may be cited as
9 the “Unfair Wage Recovery Act.”
10

11 2. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
12 read as follows:

13 11. It shall be an unlawful employment practice, or, as the case
14 may be, an unlawful discrimination:

15 a. For an employer, because of the race, creed, color, national
16 origin, ancestry, age, marital status, civil union status, domestic
17 partnership status, affectional or sexual orientation, genetic
18 information, sex, gender identity or expression, disability or
19 atypical hereditary cellular or blood trait of any individual, or
20 because of the liability for service in the Armed Forces of the
21 United States or the nationality of any individual, or because of the
22 refusal to submit to a genetic test or make available the results of a
23 genetic test to an employer, to refuse to hire or employ or to bar or
24 to discharge or require to retire, unless justified by lawful
25 considerations other than age, from employment such individual or
26 to discriminate against such individual in compensation or in terms,
27 conditions or privileges of employment; provided, however, it shall
28 not be an unlawful employment practice to refuse to accept for
29 employment an applicant who has received a notice of induction or
30 orders to report for active duty in the armed forces; provided further
31 that nothing herein contained shall be construed to bar an employer
32 from refusing to accept for employment any person on the basis of
33 sex in those certain circumstances where sex is a bona fide
34 occupational qualification, reasonably necessary to the normal
35 operation of the particular business or enterprise; provided further
36 that nothing herein contained shall be construed to bar an employer
37 from refusing to accept for employment or to promote any person
38 over 70 years of age; provided further that it shall not be an
39 unlawful employment practice for a club exclusively social or
40 fraternal to use club membership as a uniform qualification for
41 employment, or for a religious association or organization to utilize
42 religious affiliation as a uniform qualification in the employment of
43 clergy, religious teachers or other employees engaged in the
44 religious activities of the association or organization, or in
45 following the tenets of its religion in establishing and utilizing

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 criteria for employment of an employee; provided further, that it
2 shall not be an unlawful employment practice to require the
3 retirement of any employee who, for the two-year period
4 immediately before retirement, is employed in a bona fide executive
5 or a high policy-making position, if that employee is entitled to an
6 immediate non-forfeitable annual retirement benefit from a pension,
7 profit sharing, savings or deferred retirement plan, or any
8 combination of those plans, of the employer of that employee which
9 equals in the aggregate at least \$27,000.00; and provided further
10 that an employer may restrict employment to citizens of the United
11 States where such restriction is required by federal law or is
12 otherwise necessary to protect the national interest.

13 The provisions of subsections a. and b. of section 57 of
14 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
15 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
16 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

17 For the purposes of this subsection, a "bona fide executive" is a
18 top level employee who exercises substantial executive authority
19 over a significant number of employees and a large volume of
20 business. A "high policy-making position" is a position in which a
21 person plays a significant role in developing policy and in
22 recommending the implementation thereof.

23 For the purposes of this subsection, an unlawful employment
24 practice occurs, with respect to discrimination in compensation or
25 in the financial terms or conditions of employment, each occasion
26 that an individual is affected by application of a discriminatory
27 compensation decision or other practice, including, but not limited
28 to, each occasion that wages, benefits, or other compensation are
29 paid, resulting in whole or in part from such a decision or other
30 practice.

31 Nothing in this subsection shall: prohibit the court's authority to
32 apply the doctrine of "continuing violation" to any appropriate
33 claim as that doctrine currently exists in New Jersey common law;
34 weaken, obstruct, or eliminate any potential equitable application of
35 the "discovery rule" as that doctrine is currently cognizable in New
36 Jersey common law; or affect any applicable statutes of limitation.

37 b. For a labor organization, because of the race, creed, color,
38 national origin, ancestry, age, marital status, civil union status,
39 domestic partnership status, affectional or sexual orientation,
40 gender identity or expression, disability or sex of any individual, or
41 because of the liability for service in the Armed Forces of the
42 United States or nationality of any individual, to exclude or to expel
43 from its membership such individual or to discriminate in any way
44 against any of its members, against any applicant for, or individual
45 included in, any apprentice or other training program or against any
46 employer or any individual employed by an employer; provided,
47 however, that nothing herein contained shall be construed to bar a

1 labor organization from excluding from its apprentice or other
2 training programs any person on the basis of sex in those certain
3 circumstances where sex is a bona fide occupational qualification
4 reasonably necessary to the normal operation of the particular
5 apprentice or other training program.

6 c. For any employer or employment agency to print or circulate
7 or cause to be printed or circulated any statement, advertisement or
8 publication, or to use any form of application for employment, or to
9 make an inquiry in connection with prospective employment, which
10 expresses, directly or indirectly, any limitation, specification or
11 discrimination as to race, creed, color, national origin, ancestry,
12 age, marital status, civil union status, domestic partnership status,
13 affectional or sexual orientation, gender identity or expression,
14 disability, nationality or sex or liability of any applicant for
15 employment for service in the Armed Forces of the United States,
16 or any intent to make any such limitation, specification or
17 discrimination, unless based upon a bona fide occupational
18 qualification.

19 d. For any person to take reprisals against any person because
20 that person has opposed any practices or acts forbidden under this
21 act or because that person has filed a complaint, testified or assisted
22 in any proceeding under this act or to coerce, intimidate, threaten or
23 interfere with any person in the exercise or enjoyment of, or on
24 account of that person having aided or encouraged any other person
25 in the exercise or enjoyment of, any right granted or protected by
26 this act.

27 e. For any person, whether an employer or an employee or not,
28 to aid, abet, incite, compel or coerce the doing of any of the acts
29 forbidden under this act, or to attempt to do so.

30 f. (1) For any owner, lessee, proprietor, manager,
31 superintendent, agent, or employee of any place of public
32 accommodation directly or indirectly to refuse, withhold from or
33 deny to any person any of the accommodations, advantages,
34 facilities or privileges thereof, or to discriminate against any person
35 in the furnishing thereof, or directly or indirectly to publish,
36 circulate, issue, display, post or mail any written or printed
37 communication, notice, or advertisement to the effect that any of
38 the accommodations, advantages, facilities, or privileges of any
39 such place will be refused, withheld from, or denied to any person
40 on account of the race, creed, color, national origin, ancestry,
41 marital status, civil union status, domestic partnership status, sex,
42 gender identity or expression, affectional or sexual orientation,
43 disability or nationality of such person, or that the patronage or
44 custom thereat of any person of any particular race, creed, color,
45 national origin, ancestry, marital status, civil union status, domestic
46 partnership status, sex, gender identity or expression, affectional or
47 sexual orientation, disability or nationality is unwelcome,

1 objectionable or not acceptable, desired or solicited, and the
2 production of any such written or printed communication, notice or
3 advertisement, purporting to relate to any such place and to be made
4 by any owner, lessee, proprietor, superintendent or manager thereof,
5 shall be presumptive evidence in any action that the same was
6 authorized by such person; provided, however, that nothing
7 contained herein shall be construed to bar any place of public
8 accommodation which is in its nature reasonably restricted
9 exclusively to individuals of one sex, and which shall include but
10 not be limited to any summer camp, day camp, or resort camp,
11 bathhouse, dressing room, swimming pool, gymnasium, comfort
12 station, dispensary, clinic or hospital, or school or educational
13 institution which is restricted exclusively to individuals of one sex,
14 provided individuals shall be admitted based on their gender
15 identity or expression, from refusing, withholding from or denying
16 to any individual of the opposite sex any of the accommodations,
17 advantages, facilities or privileges thereof on the basis of sex;
18 provided further, that the foregoing limitation shall not apply to any
19 restaurant as defined in R.S.33:1-1 or place where alcoholic
20 beverages are served.

21 (2) Notwithstanding the definition of "a place of public
22 accommodation" as set forth in subsection l. of section 5 of
23 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
24 manager, superintendent, agent, or employee of any private club or
25 association to directly or indirectly refuse, withhold from or deny to
26 any individual who has been accepted as a club member and has
27 contracted for or is otherwise entitled to full club membership any
28 of the accommodations, advantages, facilities or privileges thereof,
29 or to discriminate against any member in the furnishing thereof on
30 account of the race, creed, color, national origin, ancestry, marital
31 status, civil union status, domestic partnership status, sex, gender
32 identity, or expression, affectional or sexual orientation, disability
33 or nationality of such person.

34 In addition to the penalties otherwise provided for a violation of
35 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
36 of subsection f. of this section is the holder of an alcoholic beverage
37 license issued under the provisions of R.S.33:1-12 for that private
38 club or association, the matter shall be referred to the Director of
39 the Division of Alcoholic Beverage Control who shall impose an
40 appropriate penalty in accordance with the procedures set forth in
41 R.S.33:1-31.

42 g. For any person, including but not limited to, any owner,
43 lessee, sublessee, assignee or managing agent of, or other person
44 having the right of ownership or possession of or the right to sell,
45 rent, lease, assign, or sublease any real property or part or portion
46 thereof, or any agent or employee of any of these:

1 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
2 to deny to or withhold from any person or group of persons any real
3 property or part or portion thereof because of race, creed, color,
4 national origin, ancestry, marital status, civil union status, domestic
5 partnership status, sex, gender identity or expression, affectional or
6 sexual orientation, familial status, disability, nationality, or source
7 of lawful income used for rental or mortgage payments;

8 (2) To discriminate against any person or group of persons
9 because of race, creed, color, national origin, ancestry, marital
10 status, civil union status, domestic partnership status, sex, gender
11 identity or expression, affectional or sexual orientation, familial
12 status, disability, nationality or source of lawful income used for
13 rental or mortgage payments in the terms, conditions or privileges
14 of the sale, rental or lease of any real property or part or portion
15 thereof or in the furnishing of facilities or services in connection
16 therewith;

17 (3) To print, publish, circulate, issue, display, post or mail, or
18 cause to be printed, published, circulated, issued, displayed, posted
19 or mailed any statement, advertisement, publication or sign, or to
20 use any form of application for the purchase, rental, lease,
21 assignment or sublease of any real property or part or portion
22 thereof, or to make any record or inquiry in connection with the
23 prospective purchase, rental, lease, assignment, or sublease of any
24 real property, or part or portion thereof which expresses, directly or
25 indirectly, any limitation, specification or discrimination as to race,
26 creed, color, national origin, ancestry, marital status, civil union
27 status, domestic partnership status, sex, gender identity, or
28 expression, affectional or sexual orientation, familial status,
29 disability, nationality, or source of lawful income used for rental or
30 mortgage payments, or any intent to make any such limitation,
31 specification or discrimination, and the production of any such
32 statement, advertisement, publicity, sign, form of application,
33 record, or inquiry purporting to be made by any such person shall
34 be presumptive evidence in any action that the same was authorized
35 by such person; provided, however, that nothing contained in this
36 subsection shall be construed to bar any person from refusing to
37 sell, rent, lease, assign or sublease or from advertising or recording
38 a qualification as to sex for any room, apartment, flat in a dwelling
39 or residential facility which is planned exclusively for and occupied
40 by individuals of one sex to any individual of the exclusively
41 opposite sex on the basis of sex provided individuals shall be
42 qualified based on their gender identity or expression;

43 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
44 to deny to or withhold from any person or group of persons any real
45 property or part or portion thereof because of the source of any
46 lawful income received by the person or the source of any lawful
47 rent payment to be paid for the real property; or

1 (5) To refuse to rent or lease any real property to another person
2 because that person's family includes children under 18 years of
3 age, or to make an agreement, rental or lease of any real property
4 which provides that the agreement, rental or lease shall be rendered
5 null and void upon the birth of a child. This paragraph shall not
6 apply to housing for older persons as defined in subsection mm. of
7 section 5 of P.L.1945, c.169 (C.10:5-5).

8 h. For any person, including but not limited to, any real estate
9 broker, real estate salesperson, or employee or agent thereof:

10 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
11 sale, rental, lease, assignment, or sublease any real property or part
12 or portion thereof to any person or group of persons or to refuse to
13 negotiate for the sale, rental, lease, assignment, or sublease of any
14 real property or part or portion thereof to any person or group of
15 persons because of race, creed, color, national origin, ancestry,
16 marital status, civil union status, domestic partnership status,
17 familial status, sex, gender identity or expression, affectional or
18 sexual orientation, disability, nationality, or source of lawful
19 income used for rental or mortgage payments, or to represent that
20 any real property or portion thereof is not available for inspection,
21 sale, rental, lease, assignment, or sublease when in fact it is so
22 available, or otherwise to deny or withhold any real property or any
23 part or portion of facilities thereof to or from any person or group of
24 persons because of race, creed, color, national origin, ancestry,
25 marital status, civil union status, domestic partnership status,
26 familial status, sex, gender identity or expression, affectional or
27 sexual orientation, disability or nationality;

28 (2) To discriminate against any person because of race, creed,
29 color, national origin, ancestry, marital status, civil union status,
30 domestic partnership status, familial status, sex, gender identity or
31 expression, affectional or sexual orientation, disability, nationality,
32 or source of lawful income used for rental or mortgage payments in
33 the terms, conditions or privileges of the sale, rental, lease,
34 assignment or sublease of any real property or part or portion
35 thereof or in the furnishing of facilities or services in connection
36 therewith;

37 (3) To print, publish, circulate, issue, display, post, or mail, or
38 cause to be printed, published, circulated, issued, displayed, posted
39 or mailed any statement, advertisement, publication or sign, or to
40 use any form of application for the purchase, rental, lease,
41 assignment, or sublease of any real property or part or portion
42 thereof or to make any record or inquiry in connection with the
43 prospective purchase, rental, lease, assignment, or sublease of any
44 real property or part or portion thereof which expresses, directly or
45 indirectly, any limitation, specification or discrimination as to race,
46 creed, color, national origin, ancestry, marital status, civil union
47 status, domestic partnership status, familial status, sex, gender

1 identity or expression, affectional or sexual orientation, disability,
2 nationality, or source of lawful income used for rental or mortgage
3 payments or any intent to make any such limitation, specification or
4 discrimination, and the production of any such statement,
5 advertisement, publicity, sign, form of application, record, or
6 inquiry purporting to be made by any such person shall be
7 presumptive evidence in any action that the same was authorized by
8 such person; provided, however, that nothing contained in this
9 subsection h., shall be construed to bar any person from refusing to
10 sell, rent, lease, assign or sublease or from advertising or recording
11 a qualification as to sex for any room, apartment, flat in a dwelling
12 or residential facility which is planned exclusively for and occupied
13 exclusively by individuals of one sex to any individual of the
14 opposite sex on the basis of sex, provided individuals shall be
15 qualified based on their gender identity or expression;

16 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
17 to deny to or withhold from any person or group of persons any real
18 property or part or portion thereof because of the source of any
19 lawful income received by the person or the source of any lawful
20 rent payment to be paid for the real property; or

21 (5) To refuse to rent or lease any real property to another person
22 because that person's family includes children under 18 years of
23 age, or to make an agreement, rental or lease of any real property
24 which provides that the agreement, rental or lease shall be rendered
25 null and void upon the birth of a child. This paragraph shall not
26 apply to housing for older persons as defined in subsection mm. of
27 section 5 of P.L.1945, c.169 (C.10:5-5).

28 i. For any person, bank, banking organization, mortgage
29 company, insurance company or other financial institution, lender
30 or credit institution involved in the making or purchasing of any
31 loan or extension of credit, for whatever purpose, whether secured
32 by residential real estate or not, including but not limited to
33 financial assistance for the purchase, acquisition, construction,
34 rehabilitation, repair or maintenance of any real property or part or
35 portion thereof or any agent or employee thereof:

36 (1) To discriminate against any person or group of persons
37 because of race, creed, color, national origin, ancestry, marital
38 status, civil union status, domestic partnership status, sex, gender
39 identity or expression, affectional or sexual orientation, disability,
40 familial status or nationality, in the granting, withholding,
41 extending, modifying, renewing, or purchasing, or in the fixing of
42 the rates, terms, conditions or provisions of any such loan,
43 extension of credit or financial assistance or purchase thereof or in
44 the extension of services in connection therewith;

45 (2) To use any form of application for such loan, extension of
46 credit or financial assistance or to make record or inquiry in
47 connection with applications for any such loan, extension of credit

1 or financial assistance which expresses, directly or indirectly, any
2 limitation, specification or discrimination as to race, creed, color,
3 national origin, ancestry, marital status, civil union status, domestic
4 partnership status, sex, gender identity or expression, affectional or
5 sexual orientation, disability, familial status or nationality or any
6 intent to make any such limitation, specification or discrimination;
7 unless otherwise required by law or regulation to retain or use such
8 information;

9 (3) (Deleted by amendment, P.L.2003, c.180).

10 (4) To discriminate against any person or group of persons
11 because of the source of any lawful income received by the person
12 or the source of any lawful rent payment to be paid for the real
13 property; or

14 (5) To discriminate against any person or group of persons
15 because that person's family includes children under 18 years of
16 age, or to make an agreement or mortgage which provides that the
17 agreement or mortgage shall be rendered null and void upon the
18 birth of a child. This paragraph shall not apply to housing for older
19 persons as defined in subsection mm. of section 5 of P.L.1945,
20 c.169 (C.10:5-5).

21 j. For any person whose activities are included within the
22 scope of this act to refuse to post or display such notices concerning
23 the rights or responsibilities of persons affected by this act as the
24 Attorney General may by regulation require.

25 k. For any real estate broker, real estate salesperson or
26 employee or agent thereof or any other individual, corporation,
27 partnership, or organization, for the purpose of inducing a
28 transaction for the sale or rental of real property from which
29 transaction such person or any of its members may benefit
30 financially, to represent that a change has occurred or will or may
31 occur in the composition with respect to race, creed, color, national
32 origin, ancestry, marital status, civil union status, domestic
33 partnership status, familial status, sex, gender identity or
34 expression, affectional or sexual orientation, disability, nationality,
35 or source of lawful income used for rental or mortgage payments of
36 the owners or occupants in the block, neighborhood or area in
37 which the real property is located, and to represent, directly or
38 indirectly, that this change will or may result in undesirable
39 consequences in the block, neighborhood or area in which the real
40 property is located, including, but not limited to the lowering of
41 property values, an increase in criminal or anti-social behavior, or a
42 decline in the quality of schools or other facilities.

43 l. For any person to refuse to buy from, sell to, lease from or
44 to, license, contract with, or trade with, provide goods, services or
45 information to, or otherwise do business with any other person on
46 the basis of the race, creed, color, national origin, ancestry, age,
47 sex, gender identity or expression, affectional or sexual orientation,

1 marital status, civil union status, domestic partnership status,
2 liability for service in the Armed Forces of the United States,
3 disability, nationality, or source of lawful income used for rental or
4 mortgage payments of such other person or of such other person's
5 spouse, partners, members, stockholders, directors, officers,
6 managers, superintendents, agents, employees, business associates,
7 suppliers, or customers. This subsection shall not prohibit refusals
8 or other actions (1) pertaining to employee-employer collective
9 bargaining, labor disputes, or unfair labor practices, or (2) made or
10 taken in connection with a protest of unlawful discrimination or
11 unlawful employment practices.

12 m. For any person to:

13 (1) Grant or accept any letter of credit or other document which
14 evidences the transfer of funds or credit, or enter into any contract
15 for the exchange of goods or services, where the letter of credit,
16 contract, or other document contains any provisions requiring any
17 person to discriminate against or to certify that he, she or it has not
18 dealt with any other person on the basis of the race, creed, color,
19 national origin, ancestry, age, sex, gender identity or expression,
20 affectional or sexual orientation, marital status, civil union status,
21 domestic partnership status, disability, liability for service in the
22 Armed Forces of the United States, or nationality of such other
23 person or of such other person's spouse, partners, members,
24 stockholders, directors, officers, managers, superintendents, agents,
25 employees, business associates, suppliers, or customers.

26 (2) Refuse to grant or accept any letter of credit or other
27 document which evidences the transfer of funds or credit, or refuse
28 to enter into any contract for the exchange of goods or services, on
29 the ground that it does not contain such a discriminatory provision
30 or certification.

31 The provisions of this subsection shall not apply to any letter of
32 credit, contract, or other document which contains any provision
33 pertaining to employee-employer collective bargaining, a labor
34 dispute or an unfair labor practice, or made in connection with the
35 protest of unlawful discrimination or an unlawful employment
36 practice, if the other provisions of such letter of credit, contract, or
37 other document do not otherwise violate the provisions of this
38 subsection.

39 n. For any person to aid, abet, incite, compel, coerce, or induce
40 the doing of any act forbidden by subsections l. and m. of section
41 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
42 do so. Such prohibited conduct shall include, but not be limited to:

43 (1) Buying from, selling to, leasing from or to, licensing,
44 contracting with, trading with, providing goods, services, or
45 information to, or otherwise doing business with any person
46 because that person does, or agrees or attempts to do, any such act
47 or any act prohibited by this subsection; or

1 (2) Boycotting, commercially blacklisting or refusing to buy
2 from, sell to, lease from or to, license, contract with, provide goods,
3 services or information to, or otherwise do business with any person
4 because that person has not done or refuses to do any such act or
5 any act prohibited by this subsection; provided that this subsection
6 shall not prohibit refusals or other actions either pertaining to
7 employee-employer collective bargaining, labor disputes, or unfair
8 labor practices, or made or taken in connection with a protest of
9 unlawful discrimination or unlawful employment practices.

10 o. For any multiple listing service, real estate brokers'
11 organization or other service, organization or facility related to the
12 business of selling or renting dwellings to deny any person access
13 to or membership or participation in such organization, or to
14 discriminate against such person in the terms or conditions of such
15 access, membership, or participation, on account of race, creed,
16 color, national origin, ancestry, age, marital status, civil union
17 status, domestic partnership status, familial status, sex, gender
18 identity or expression, affectional or sexual orientation, disability or
19 nationality.

20 p. Nothing in the provisions of this section shall affect the
21 ability of an employer to require employees to adhere to reasonable
22 workplace appearance, grooming and dress standards not precluded
23 by other provisions of State or federal law, except that an employer
24 shall allow an employee to appear, groom and dress consistent with
25 the employee's gender identity or expression.

26 q. (1) For any employer to impose upon a person as a condition
27 of obtaining or retaining employment, including opportunities for
28 promotion, advancement or transfers, any terms or conditions that
29 would require a person to violate or forego a sincerely held
30 religious practice or religious observance, including but not limited
31 to the observance of any particular day or days or any portion
32 thereof as a Sabbath or other holy day in accordance with the
33 requirements of the religion or religious belief, unless, after
34 engaging in a bona fide effort, the employer demonstrates that it is
35 unable to reasonably accommodate the employee's religious
36 observance or practice without undue hardship on the conduct of the
37 employer's business. Notwithstanding any other provision of law to
38 the contrary, an employee shall not be entitled to premium wages or
39 premium benefits for work performed during hours to which those
40 premium wages or premium benefits would ordinarily be
41 applicable, if the employee is working during those hours only as an
42 accommodation to his religious requirements. Nothing in this
43 subsection q. shall be construed as reducing:

44 (a) The number of the hours worked by the employee which are
45 counted towards the accruing of seniority, pension or other benefits;
46 or

1 (b) Any premium wages or benefits provided to an employee
2 pursuant to a collective bargaining agreement.

3 (2) For an employer to refuse to permit an employee to utilize
4 leave, as provided for in this subsection q., which is solely used to
5 accommodate the employee's sincerely held religious observance or
6 practice. Except where it would cause an employer to incur an
7 undue hardship, no person shall be required to remain at his place
8 of employment during any day or days or portion thereof that, as a
9 requirement of his religion, he observes as his Sabbath or other holy
10 day, including a reasonable time prior and subsequent thereto for
11 travel between his place of employment and his home; provided that
12 any such absence from work shall, wherever practicable in the
13 reasonable judgment of the employer, be made up by an equivalent
14 amount of time and work at some other mutually convenient time,
15 or shall be charged against any leave with pay ordinarily granted,
16 other than sick leave, and any such absence not so made up or
17 charged, may be treated by the employer of that person as leave
18 taken without pay.

19 (3) (a) For purposes of this subsection q., "undue hardship"
20 means an accommodation requiring unreasonable expense or
21 difficulty, unreasonable interference with the safe or efficient
22 operation of the workplace or a violation of a bona fide seniority
23 system or a violation of any provision of a bona fide collective
24 bargaining agreement.

25 (b) In determining whether the accommodation constitutes an
26 undue hardship, the factors considered shall include:

27 (i) The identifiable cost of the accommodation, including the
28 costs of loss of productivity and of retaining or hiring employees or
29 transferring employees from one facility to another, in relation to
30 the size and operating cost of the employer.

31 (ii) The number of individuals who will need the particular
32 accommodation for a sincerely held religious observance or
33 practice.

34 (iii) For an employer with multiple facilities, the degree to which
35 the geographic separateness or administrative or fiscal relationship
36 of the facilities will make the accommodation more difficult or
37 expensive.

38 (c) An accommodation shall be considered to constitute an
39 undue hardship if it will result in the inability of an employee to
40 perform the essential functions of the position in which he or she is
41 employed.

42 (d) (i) The provisions of this subsection q. shall be applicable
43 only to reasonable accommodations of religious observances and
44 shall not supersede any definition of undue hardship or standards
45 for reasonable accommodation of the disabilities of employees.

46 (ii) This subsection q. shall not apply where the uniform
47 application of terms and conditions of attendance to employees is

1 essential to prevent undue hardship to the employer. The burden of
2 proof regarding the applicability of this subparagraph (d) shall be
3 upon the employer.

4 (cf: P.L.2007, c.325, s.2)

5
6 3. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill provides that a discriminatory compensation decision or
12 other employment practice that is unlawful under the “Law Against
13 Discrimination,” occurs each occasion that compensation is paid in
14 furtherance of that discriminatory decision or practice. This
15 provision thus “restarts” the applicable statute of limitations
16 governing discriminatory compensation claims under the “Law
17 Against Discrimination,” effectively making each paycheck another
18 instance of the discriminatory compensation decision or other
19 practice and therefore a new or continuing violation.

20 The bill, reflects language in the “Lilly Ledbetter Fair Pay Act of
21 2009,” Pub.L. 111-2, which clarified that, under various federal
22 anti-discrimination laws, including the Civil Rights Act of 1964, an
23 unlawful discriminatory compensation decision occurs each time
24 wages, benefits, or other compensation are paid to an individual.
25 This bill sets forth the same provision as applicable under this
26 State’s “Law Against Discrimination.”

27 Finally, the bill provides that nothing in the “Law Against
28 Discrimination” will: prohibit the court’s authority to apply the
29 doctrine of “continuing violation” to any appropriate claim as that
30 doctrine currently exists in New Jersey common law; weaken,
31 obstruct, or eliminate any potential equitable application of the
32 “discovery rule” as that doctrine is currently cognizable in New
33 Jersey common law; or affect any applicable statutes of limitation.